

CHAPTER 801

CIVIL PROCEDURE — COMMENCEMENT OF ACTION AND VENUE

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NOTE: Chapter 801 was created by Sup. Ct. Order, 67 Wis. 2d 585 (1975), which contains Judicial Council Committee notes explaining each section. Statutes prior to the 1983–84 edition also have these notes.

801.01 Kinds of proceedings; scope of chs. 801 to 847.

(1) **KINDS.** Proceedings in the courts are divided into actions and special proceedings. “Action”, as used in chs. 801 to 847, includes “special proceeding” unless a specific provision of procedure in special proceedings exists.

(2) **SCOPE.** Chapters 801 to 847 govern procedure and practice in circuit courts of this state in all civil actions and special proceedings whether cognizable as cases at law, in equity or of statutory origin except where different procedure is prescribed by statute or rule. Chapters 801 to 847 shall be construed to secure the just, speedy and inexpensive determination of every action and proceeding.

(3) **EFFECTIVE DATES.** (a) Chapters 801 to 803 shall apply to all actions commenced on or after January 1, 1976.

(b) Chapters 804 to 807 shall apply to all actions pending or commenced on or after January 1, 1976, except those actions in which trial has commenced prior to January 1, 1976, as to which the statutes and rules in effect prior to January 1, 1976, shall continue to apply.

(c) Amendments and repeals of sections outside of chs. 801 to 807 shall be effective as follows:

1. Amendments and repeals effected in order to conform with provisions in chs. 801 to 803 shall apply to all actions commenced on or after January 1, 1976.

2. Amendments and repeals other than those effected in order to conform with provisions in chs. 801 to 803 shall take effect on January 1, 1976, as to all actions then pending or thereafter commenced, except as provided in par. (b).

History: Sup. Ct. Order, 67 Wis. 2d 585, 588 (1975); 1977 c. 449; 1979 c. 89; 1981 c. 390.

Chapters 801 to 847 apply to in rem actions under s. 161.555 [now 961.555] and under s. 801.07 may not be brought against an inanimate object as sole “defendant”. *State v. One 1973 Cadillac*, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

An “action” includes special proceedings such as probate. In *Matter of Estate of Martz*, 171 Wis. 2d 89, 491 N.W.2d 772 (Ct. App. 1992).

The applicability of chs. 801 to 847 in civil actions is not determined by a “mere alleged incompatibility” of statutes. Without an explicit or implicit prescription by the statute of a “different procedure,” chs. 801 to 847 are applicable in civil proceedings. *State v. Brown*, 215 Wis. 2d 710, 573 N.W.2d 884 (Ct. App. 1997), 96–1211.

Summary judgment procedure is inconsistent with, and unworkable in, ch. 345 forfeiture proceeding. *State v. Schneck*, 2002 WI App 239, 257 Wis. 2d 704, 652 N.W.2d 434.

Summary judgment is inapplicable in ch. 343 hearings. *State v. Baratka*, 2002 WI App 288, 258 Wis. 2d 342, 654 N.W.2d 875.

The new Wisconsin rules of civil procedure: Chapters 801–803. Clausen and Lowe. 59 MLR 1.

801.02 Commencement of action. (1) A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint naming the person

as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.

(2) A civil action in which only an in rem or quasi in rem judgment is sought is commenced as to any defendant when a summons and a complaint are filed with the court, provided service of an authenticated copy of the summons and of either the complaint or a notice of object of action under s. 801.12 is made upon the defendant under this chapter within 90 days after filing.

(3) The original summons and complaint shall be filed together. The authenticated copies shall be served together except:

(a) In actions in which a personal judgment is sought, if the summons is served by publication, only the summons need be published, but a copy of the complaint shall be mailed with a copy of the summons as required by s. 801.11, and;

(b) In actions in which only an in rem or quasi in rem judgment is sought, the summons may be accompanied by a notice of object of action pursuant to s. 801.12 in lieu of a copy of the complaint and, when the summons is served by publication, only the summons need be published, but a copy of the complaint or notice of object of action shall be mailed with the copy of the summons as required by s. 801.12.

(4) No service shall be made under sub. (3) until the action has been commenced in accordance with sub. (1) or (2).

(5) An action seeking a remedy available by certiorari, quo warranto, habeas corpus, mandamus or prohibition may be commenced under sub. (1), by service of an appropriate original writ on the defendant named in the writ if a copy of the writ is filed forthwith, or by filing a complaint demanding and specifying the remedy, if service of an authenticated copy of the complaint and of an order signed by the judge of the court in which the complaint is filed is made upon the defendant under this chapter within the time period specified in the order. The order may specify a time period shorter than that allowed by s. 802.06 for filing an answer or other responsive pleading.

(6) Fees payable upon commencement of a civil action shall be paid to the clerk at the time of filing.

(7) (a) In this subsection:

1. “Correctional institution” means any state or local facility that incarcerates or detains any adult accused of, charged with, convicted of, or sentenced for any crime. A correctional institution includes a Type 1 prison, as defined in s. 301.01 (5), a Type 2 prison, as defined in s. 301.01 (6), a county jail and a house of correction.

2. “Prisoner” means any person who is incarcerated, imprisoned or otherwise detained in a correctional institution or who is

arrested or otherwise detained by a law enforcement officer. “Prisoner” does not include any of the following:

- a. A person committed under ch. 980.
- b. A person bringing an action seeking relief from a judgment terminating parental rights.
- c. A person bringing an action seeking relief from a judgment of conviction or a sentence of a court, including an action for an extraordinary writ or a supervisory writ seeking relief from a judgment of conviction or a sentence of a court or an action under s. 809.30, 809.40, 973.19, 974.06 or 974.07.
- d. A person bringing an action under s. 809.50 seeking relief from an order or judgment not appealable as of right that was entered in a proceeding under ch. 980 or in a case specified under s. 809.30 or 809.40.
- e. A person who is not serving a sentence for the conviction of a crime but who is detained, admitted or committed under ch. 51 or 55 or s. 971.14 (2) or (5).

3. “Prison or jail conditions” means any matter related to the conditions of confinement or to the effects of actions by government officers, employees or agents on the lives of prisoners.

(b) No prisoner may commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions in the facility in which he or she is or has been incarcerated, imprisoned or detained until the person has exhausted all available administrative remedies that the department of corrections has promulgated by rule or, in the case of prisoners not in the custody of the department of corrections, that the sheriff, superintendent or other keeper of a jail or house of correction has reduced to writing and provided reasonable notice of to the prisoners.

(bm) A prisoner commencing an action or special proceeding shall first comply with the provisions of s. 893.80 or 893.82 unless one of the following applies:

1. The prisoner is filing a petition for a common law writ of certiorari.
2. The prisoner is commencing an action seeking injunctive relief and the court finds that there is a substantial risk to the prisoner’s health or safety.

(c) At the time of filing the initial pleading to commence an action or special proceeding, including a petition for a common law writ of certiorari, related to prison or jail conditions, a prisoner shall include, as part of the initial pleading, documentation showing that he or she has exhausted all available administrative remedies. The documentation shall include copies of all of the written materials that he or she provided to the administrative agency as part of the administrative proceeding and all of the written materials the administrative agency provided to him or her related to that administrative proceeding. The documentation shall also include all written materials included as part of any administrative appeal. The court shall deny a prisoner’s request to proceed without the prepayment of fees and costs under s. 814.29 (1m) if the prisoner fails to comply with this paragraph or if the prisoner has failed to exhaust all available administrative remedies.

(d) If the prisoner seeks leave to proceed without giving security for costs or without the payment of any service or fee under s. 814.29, the court shall dismiss any action or special proceeding, including a petition for a common law writ of certiorari, commenced by any prisoner if that prisoner has, on 3 or more prior occasions, while he or she was incarcerated, imprisoned, confined or detained in a jail or prison, brought an appeal, writ of error, action or special proceeding, including a petition for a common law writ of certiorari, that was dismissed by a state or federal court for any of the reasons listed in s. 802.05 (3) (b) 1. to 4. The court may permit a prisoner to commence the action or special proceed-

ing, notwithstanding this paragraph, if the court determines that the prisoner is in imminent danger of serious physical injury.

History: Sup. Ct. Order, 67 Wis. 2d 585, 589 (1975); 1975 c. 218; 1981 c. 289, 317; 1995 a. 27; 1997 a. 133, 187; 2001 a. 16.

Judicial Council Note, 1981: Sub. (1) is amended to allow an action seeking an extraordinary remedy to be commenced in the same manner as any other civil action. Sub. (5) allows the additional option of using an order to shorten the time for filing a response to the complaint in lieu of a summons. This option is for the emergency situation when the case may be moot before a response would be filed. The order serves the same purpose as the alternative writ and the order to show cause used to initiate the action under writ procedures. In all other matters of procedure, the rules of civil procedure govern to the extent applicable. Sub. (5) applies only to procedure in the circuit court. In seeking an extraordinary remedy in the supreme court or court of appeals, s. 809.51, stats., should be followed. [Bill 613–A]

Pursuant to sub. (5), a certiorari action may be commenced in three ways: 1) pursuant to sub. (1) by summons and complaint; 2) by service of an appropriate writ; or 3) by filing a complaint and serving it along with an order, in lieu of a summons, upon defendant. *Nickel River Investments v. LaCrosse Review Board*, 156 Wis. 2d 429, 457 N.W.2d 333 (Ct. App 1990). See also *Tobler v. Door County*, 158 Wis. 2d 19, 461 N.W.2d 775 (1990).

The test to determine whether defects in summons and complaints are fatal is set forth. The trial court has jurisdiction if the error is technical and the complainant can show that the defendant was not prejudiced. When the error is fundamental, no jurisdiction may attach. *American Family Mutual Insurance v. Royal Ins. Co.* 167 Wis. 2d 524, 481 N.W.2d 629 (1992).

A summons that designated an attorney to receive the defendant’s answer, but was signed by the plaintiff, was technically defective and did not deprive the court of personal jurisdiction. *Dungan v. County of Pierce*, 170 Wis. 2d 89, 486 N.W.2d 77 (Ct. App. 1992).

Sub. (1) applies to the service of amended complaints. *Archambault v. A–C Product Liability Trust*, 205 Wis. 2d 400, 556 N.W.2d 392 (Ct. App. 1996).

A summons served by publication under sub. (3) must be authenticated. When an authenticated copy of the summons was published, but an unauthenticated copy was mailed, together with authenticated copies of the original summons and complaint, there was a technical, but no fundamental, error. *Burnett v. Hill*, 207 Wis. 2d 110, 557 N.W.2d 800 (1997).

An inmate challenging the calculation of his mandatory release date is not seeking relief from a judgment of conviction or a sentence of a court, does not fall within sub. (7) (a) 2. c., and is therefore a “prisoner” within the meaning of sub. (7) who must comply with the requirements of that subsection. *State ex rel. Stinson v. Morgan*, 226 Wis. 2d 100, 593 N.W.2d 924 (Ct. App. 1999).

For a document to be filed, it must be properly deposited with the clerk under s. 59.40 (2). “Properly” connotes complying with formality or correctness, but is not susceptible to exact definition. The delivery of papers to the clerk at his home after business hours was too far removed from legislative guidelines to be considered properly deposited. *Granado v. Sentry Insurance*, 228 Wis. 2d 794, 599 N.W.2d 62 (Ct. App. 1999).

The sub. (7) (d) dismissals rule does not apply when a prisoner has sufficient prison trust funds to pay the filing fee in full. A court order under s. 814.29 (1m) (d) is required to release the funds. *State ex rel. Coleman v. Sullivan*, 229 Wis. 2d 804, 601 N.W.2d 335 (Ct. App. 1999).

The definition of “correctional institution” in sub. (7) (a) 1. does not include an out-of-state county jail, and therefore a Wisconsin inmate sent to such a jail is not a prisoner under sub. (7) (a) 2. *State ex rel. Speener v. Gudmanson*, 2000 WI 78, 234 Wis. 2d 461, 610 N.W.2d 136.

Sub. (7) (d), as applied to the petitioner, did not violate the constitutional guarantees of access to the courts or equal protection. *State ex rel. Khan v. Sullivan*, 2000 WI App 109, 235 Wis. 2d 260, 613 N.W.2d 203.

A petitioner who seeks to overturn the revocation of probation by a writ of certiorari is a prisoner under sub. (7) (a) 2. A probation revocation is not analogous to a judgment of conviction or a sentence, and a writ of certiorari challenging revocation is not subject to the exclusion under sub. (7) (a) 2. c. *State ex rel. Cramer v. Wisconsin Court of Appeals*, 2000 WI 86, 236 Wis. 2d 473, 613 N.W.2d 591.

An appeal is not included in “any action or special proceeding” that is subject to dismissal under sub. (7) (d). *State ex rel. Adell v. Smith*, 2000 WI App 188, 238 Wis. 2d 655, 618 N.W.2d 208.

Sub. (7), 95–96 stats., did not apply to a petition for a writ of certiorari seeking judicial review of a probation revocation by the department of administration. *State ex rel. Mentek v. Schwarz*, 2001 WI 32, 242 Wis. 2d 94, 624 N.W.2d 150.

The requirement of exhaustion of administrative remedies under sub. (7) (b) is applicable to a case advancing a constitutional challenge. There is no common law futility exception. This section also controls over s. 227.40, which in some cases allows obtaining a declaratory judgment without exhausting all administrative remedies. *State ex rel. Hensley v. Endicott*, 2001 WI 105, 245 Wis. 2d 607, 629 N.W.2d 686.

Neither s. 801.02 (1) nor s. 801.11 allows a defendant who is being sued in a dual capacity, personally and officially, to be served in only one of those capacities. When an officer of a company received service on behalf of the company, receiving one copy of a summons and complaint, but was not served as an individual, although named individually, there was no jurisdiction over him as an individual. *Useni v. Boudron*, 2003 WI App 98, 264 Wis. 2d 783, 662 N.W.2d 672, 02–1475.

Timely Service Abroad in Diversity Suits. *La Fave*. Wis.Law. Nov. 2000.

801.03 Jurisdiction; definitions. In this chapter, the following words have the designated meanings:

(1) “Defendant” means the person named as defendant in a civil action, and where in this chapter acts of the defendant are referred to, the reference attributes to the defendant any person’s acts for which acts the defendant is legally responsible. In determining for jurisdiction purposes the defendant’s legal responsibility for the acts of another, the substantive liability of the defendant to the plaintiff is irrelevant.

(2) “Person” means any natural person, partnership, association, and body politic and corporate.

(3) “Plaintiff” means the person named as plaintiff in a civil action, and where in this chapter acts of the plaintiff are referred to, the reference attributes to the plaintiff the acts of an agent within the scope of the agent’s authority.

History: Sup. Ct. Order, 67 Wis. 2d 585, 591 (1975); 1975 c. 218; 1983 a. 189. Illegal aliens have the right to sue in Wisconsin for injuries negligently inflicted upon them. *Arteaga v. Literski*, 83 Wis. 2d 128, 265 N.W.2d 148 (1978).

801.04 Jurisdictional requirements for judgments against persons, status and things. (1) JURISDICTION OF SUBJECT MATTER REQUIRED FOR ALL CIVIL ACTIONS. A court of this state may entertain a civil action only when the court has power to hear the kind of action brought. The power of the court to hear the kind of action brought is called “jurisdiction of the subject matter”. Jurisdiction of the subject matter is conferred by the constitution and statutes of this state and by statutes of the United States; it cannot be conferred by consent of the parties. Nothing in chs. 801 to 847 affects the subject matter jurisdiction of any court of this state.

(2) PERSONAL JURISDICTION. A court of this state having jurisdiction of the subject matter may render a judgment against a party personally only if there exists one or more of the jurisdictional grounds set forth in s. 801.05 or 801.06 and in addition either:

(a) A summons is served upon the person pursuant to s. 801.11; or

(b) Service of a summons is dispensed with under the conditions in s. 801.06.

(3) JURISDICTION IN REM OR QUASI IN REM. A court of this state having jurisdiction of the subject matter may render a judgment in rem or quasi in rem upon a status or upon a property or other thing pursuant to s. 801.07 and the judgment in such action may affect the interests in the status, property or thing of all persons served pursuant to s. 801.12 with a summons and complaint or notice of object of action as the case requires.

History: Sup. Ct. Order, 67 Wis. 2d 585, 591 (1975); 1979 c. 89.

A court having jurisdiction may decline to exercise it if there are sufficient policy reasons to do so. *Jones v. Jones*, 54 Wis. 2d 41, 194 N.W.2d 627 (1972).

State courts, including small claims courts, have a constitutional obligation to hear and decide 42 USC s. 1983 cases whether or not the federal right asserted is pendent to a state claim. *Terry v. Kolski*, 78 Wis. 2d 475, 254 N.W.2d 704 (1977).

A prior adult proceeding that litigated the question of the respondent’s age collaterally estopped the state from relitigating the same question in juvenile court. The juvenile court has subject matter jurisdiction of the case. *In Interest of H.N.T.* 125 Wis. 2d 242, 371 N.W.2d 395 (Ct. App. 1985).

Subject to limited exceptions, complainants in 42 USC 1983 actions need not exhaust administrative remedies prior to being brought in state court. *Casteel v. Vaade*, 167 Wis. 2d 1, 481 N.W.2d 277 (1992).

State court jurisdiction. 1978 WLR 533.

801.05 Personal jurisdiction, grounds for generally. A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 801.11 under any of the following circumstances:

(1) LOCAL PRESENCE OR STATUS. In any action whether arising within or without this state, against a defendant who when the action is commenced:

(a) Is a natural person present within this state when served; or

(b) Is a natural person domiciled within this state; or

(c) Is a domestic corporation or limited liability company; or

(d) Is engaged in substantial and not isolated activities within this state, whether such activities are wholly interstate, intrastate, or otherwise.

(2) SPECIAL JURISDICTION STATUTES. In any action which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

(3) LOCAL ACT OR OMISSION. In any action claiming injury to person or property within or without this state arising out of an act or omission within this state by the defendant.

(4) LOCAL INJURY; FOREIGN ACT. In any action claiming injury to person or property within this state arising out of an act or omission outside this state by the defendant, provided in addition that at the time of the injury, either:

(a) Solicitation or service activities were carried on within this state by or on behalf of the defendant; or

(b) Products, materials or things processed, serviced or manufactured by the defendant were used or consumed within this state in the ordinary course of trade.

(5) LOCAL SERVICES, GOODS OR CONTRACTS. In any action which:

(a) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff’s benefit, by the defendant to perform services within this state or to pay for services to be performed in this state by the plaintiff; or

(b) Arises out of services actually performed for the plaintiff by the defendant within this state, or services actually performed for the defendant by the plaintiff within this state if such performance within this state was authorized or ratified by the defendant; or

(c) Arises out of a promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff’s benefit, by the defendant to deliver or receive within this state or to ship from this state goods, documents of title, or other things of value; or

(d) Relates to goods, documents of title, or other things of value shipped from this state by the plaintiff to the defendant on the defendant’s order or direction; or

(e) Relates to goods, documents of title, or other things of value actually received by the plaintiff in this state from the defendant without regard to where delivery to carrier occurred.

(6) LOCAL PROPERTY. In any action which arises out of:

(a) A promise, made anywhere to the plaintiff or to some 3rd party for the plaintiff’s benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this state; or

(b) A claim to recover any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this state either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

(c) A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this state at the time the defendant acquired possession or control over it.

(7) DEFICIENCY JUDGMENT ON LOCAL FORECLOSURE OR RESALE. In any action to recover a deficiency judgment upon a mortgage note or conditional sales contract or other security agreement executed by the defendant or predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

(a) In an action in this state to foreclose upon real property situated in this state; or

(b) Following sale of real property in this state by the plaintiff under ch. 846; or

(c) Following resale of tangible property in this state by the plaintiff under ch. 409.

(8) DIRECTOR, OFFICER OR MANAGER OF A DOMESTIC CORPORATION OR LIMITED LIABILITY COMPANY. In any action against a defendant who is or was an officer, director or manager of a domestic corporation or domestic limited liability company where the action arises out of the defendant’s conduct as such officer, director or manager or out of the activities of such corporation

or limited liability company while the defendant held office as a director, officer or manager.

(9) TAXES OR ASSESSMENTS. In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this state after July 1, 1960.

(10) INSURANCE OR INSURERS. In any action which arises out of a promise made anywhere to the plaintiff or some 3rd party by the defendant to insure upon or against the happening of an event and in addition either:

(a) The person insured was a resident of this state when the event out of which the cause of action is claimed to arise occurred; or

(b) The event out of which the cause of action is claimed to arise occurred within this state, regardless of where the person insured resided.

(11) CERTAIN MARITAL ACTIONS. In addition to personal jurisdiction under sub. (1) and s. 801.06, in any action affecting the family, except for actions under ch. 769, in which a personal claim is asserted against the respondent commenced in the county in which the petitioner resides at the commencement of the action when the respondent resided in this state in marital relationship with the petitioner for not less than 6 consecutive months within the 6 years next preceding the commencement of the action and the respondent is served personally under s. 801.11. The effect of any determination of a child's custody shall not be binding personally against any parent or guardian unless the parent or guardian has been made personally subject to the jurisdiction of the court in the action as provided under this chapter or has been notified under s. 822.05 as provided in s. 822.12.

(12) PERSONAL REPRESENTATIVE. In any action against a personal representative to enforce a claim against the deceased person represented where one or more of the grounds stated in subs. (2) to (11) would have furnished a basis for jurisdiction over the deceased had the deceased been living and it is immaterial under this subsection whether the action had been commenced during the lifetime of the deceased.

(13) JOINDER OF CLAIMS IN THE SAME ACTION. In any action brought in reliance upon jurisdictional grounds stated in subs. (2) to (11) there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under this section for personal jurisdiction over the defendant as to the claim or cause to be joined.

History: Sup. Ct. Order, 67 Wis. 2d 585, 592 (1975); 1975 c. 218; 1977 c. 105, 203, 418; 1979 c. 196; 1979 c. 352 s. 39; 1993 a. 112, 326, 486.

Jurisdiction over a foreign executor under sub. (12) cannot be based on substantial activities in Wisconsin under sub. (1) (d). *Rauser v. Rauser*, 47 Wis. 2d 295, 177 N.W.2d 115 (1970).

In an action against an Illinois corporate defendant and its officer alleging fraudulent advertising, the trial court possessed jurisdiction over the officer when the answer to the complaint admitted corporate advertising in newspapers circulated in Wisconsin, the contacting of Wisconsin residents responding to the advertisements, and the taking of earnest money deposits, and when testimony indicated that the defendant had participated in one such transaction in the state. *State v. Advance Marketing Consultants, Inc.* 66 Wis. 2d 706, 225 N.W.2d 887 (1975).

Wisconsin courts may issue in personam orders that may operate on out-of-state property. *Dalton v. Meister*, 71 Wis. 2d 504, 239 N.W.2d 9 (1976).

The trial court was entitled to consider the complaint and answer in determining whether the court had jurisdiction. *Mercato Distributing Corp. v. O & R Engines, Inc.* 71 Wis. 2d 792, 239 N.W.2d 97 (1976).

A manufacturer having no dealers or distributors in Wisconsin was amenable to jurisdiction under sub. (4) by virtue of magazine advertisement solicitations and out-of-state sales to Wisconsin residents. *Fields v. Playboy Club of Lake Geneva, Inc.* 75 Wis. 2d 644, 250 N.W.2d 311 (1977).

Findings of the facts requisite for jurisdiction under sub. (4) (b) may properly be made by reasonable inference from facts proven in the record. *Stevens v. White Motor Corp.* 77 Wis. 2d 64, 252 N.W.2d 88 (1977).

Standards of the "long-arm" statute prima facie meet due process requirements. *Schmitz v. Hunter Machinery Co.* 89 Wis. 2d 388, 279 N.W.2d 172 (1979).

The burden of proof is on the plaintiff to establish jurisdiction under this section. *Lincoln v. Seawright*, 104 Wis. 2d 4, 310 N.W.2d 596 (1981).

Substantially higher "doing business" contacts under sub. (1) (d) are required when a nonresident plaintiff brings a foreign cause of action. *Vermont Yogurt v. Blanke Baer Fruit & Flavor*, 107 Wis. 2d 603, 321 N.W.2d 315 (Ct. App. 1982).

Sub. (11) provides 3 independent sources of personal jurisdiction that must be considered in the disjunctive. *McAleavy v. McAleavy*, 150 Wis. 2d 26, 440 N.W.2d 566 (1989).

Telephone calls received by a defendant do not, standing alone, constitute sufficient contact to establish a basis for personal jurisdiction. *Dietrich v. Patients Compensation Board*, 169 Wis. 2d 471, 485 N.W.2d 614 (Ct. App. 1992).

A non-resident corporate officer alleged to have committed fraud or misrepresentation is subject to Wisconsin jurisdiction only if some act or omission was committed in Wisconsin. *Pavlic v. Woodrum*, 169 Wis. 2d 585, 486 N.W.2d 533, (Ct. App. 1992).

The term "service activities" under sub. (4) (a) requires that a defendant be engaged in some type of regular ongoing or repetitive activities in Wisconsin. Two meetings does not constitute service activities carried on within the state. *Housing Horizons, LLC v. Alexander Company, Inc.* 2000 WI App 9, 232 Wis. 2d 178, 606 N.W.2d 263. "Process" in sub. (4) (b) means subjecting something to a particular system of handling to effect a particular result and preparing something for market or other commercial use by subjecting it to a process. *Kopke v. A. Hartrodt S.R.L.* 2001 WI 99, 245 Wis. 2d 396, 629 N.W.2d 662.

A stream of commerce theory, that it is not unreasonable to subject a nonresident manufacturer or distributor to suit if the sale of a product is not simply an isolated occurrence but arises from efforts to serve, directly or indirectly, the market for the product in the state, is applicable in determining whether sufficient minimum contacts exist for jurisdiction to be found. *Kopke v. A. Hartrodt S.R.L.* 2001 WI 99, 245 Wis. 2d 396, 629 N.W.2d 662.

Section 767.05 and subs. (1) and (11), when read together, provide that sub. (1) (d) may be a basis for personal jurisdiction over a respondent in a divorce and is not restricted to business or employment related activities. *Bushelman v. Bushelman*, 2001 WI App 124, 246 Wis. 2d 317, 629 N.W.2d 795.

The presumption of compliance with due process arising from this section may be rebutted by a defendant. There is a 5-factor test to analyze the substantiality of the defendant's contacts for due process purposes: the quantity, nature, and quality of the contacts, the source of the cause of action and its connection with those contacts, the interest of the state in the action, and convenience to the parties. *Bushelman v. Bushelman*, 2001 WI App 124, 246 Wis. 2d 317, 629 N.W.2d 795.

If a person is induced by false representations to come within the jurisdiction of a court for the purpose of obtaining service of process upon him or her, it is an abuse of legal process, and the service will be set aside. Service on a person who enters the state to engage in settlement talks will not be set aside in the absence of an agreement that service will not be attempted. *Manitowoc Western Company, Inc. v. Montonen*, 2002 WI 21, 250 Wis. 2d 452, 639 N.W.2d 726.

Traditional personal jurisdiction is not required in child custody proceedings. Child custody proceedings under ch. 822 are valid even in the absence of minimum contacts over an out-of-state parent. Section 801.05 (11) provides sufficient due process protection to out-of-state parents based on notice and an opportunity to be heard. *Tammie J. C. v. Robert T. R.* 2003 WI 61, 262 Wis. 2d 217, 663 N.W.2d 734, 01-2787.

A father's acquiescence in his daughter's desire to live with her mother in California did not confer jurisdiction over the father in California courts. *Kulko v. California Superior Court*, 436 U.S. 84 (1978).

A state may not exercise quasi in rem jurisdiction over a defendant having no forum contacts by attacking a contractual obligation of the defendant's insurer licensed in the state. *Rush v. Savchuk*, 444 U.S. 320 (1980).

When an accident involving only Wisconsin residents occurred in Wisconsin, the fact that the decedent had been employed in Minnesota conferred jurisdiction on the Minnesota courts and Minnesota insurance law was applicable. *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981).

When an out-of-state defendant placed an order in Wisconsin, but conducted no other activities in the state, the minimum contacts test was not satisfied. *Lakeside Bridge & Steel v. Mountain State Const.* 597 F.2d 596 (1979).

A New York corporation was subject to the long-arm statute when agents of the corporation made 2 visits to the state in connection with business on which the claim was based. *Wisconsin Electrical Manufacturing Co., Inc. v. Pennant Products*, 619 F.2d 676 (1980).

The Wisconsin circuit court had exclusive jurisdiction over trust assets in Illinois, making removal to Wisconsin federal district court improper. *Norton v. Bridges*, 712 F.2d 1156 (1983).

"Processed" under sub. (4) (b) included a distributor's purchase and sale of goods in the normal course of distribution of those goods. *Nelson By Carson v. Park Industries, Inc.* 717 F.2d 1120 (1983).

A buyer's inspection of goods before shipment from the state was sufficient contact for jurisdiction. *Afram Export Corp. v. Metallurgiki Halyps, S.A.* 772 F.2d 1358 (1985).

An act or omission occurring outside the state with consequences in the state does not fit the tort provisions of sub. (3). Services within the state under sub. (5) do not include the purchase of insurance from a state company. *Federated Rural Electric Ins. v. Inland Power & Light*, 18 F.3d 389 (1994).

Jurisdiction in an action for misrepresentation in the sale of a boat did not exist when the only contact was that the boat would be operated partly in Wisconsin and that the seller wrote a letter to the Wisconsin buyer confirming the already existing contract. *McCalla v. A. J. Industries, Inc.* 352 F. Supp. 544 (1973).

The fact that a Virginia corporation was a distributor for a Wisconsin corporation in Virginia is not enough to justify an action in Wisconsin. *Watrall v. Murphy Diesel Co.* 358 F. Supp. 968 (1973).

A Texas company that ordered a turbine from a Wisconsin manufacturer and sent representatives to Wisconsin twice was subject to Wisconsin jurisdiction. *Nordberg Division, Rex Chainbelt, Inc. v. Hudson Engineering Corp.* 361 F. Supp. 903 (1973).

An action for injuries sustained by the plaintiff while using a machine manufactured by the defendant in France and sold to the plaintiff's employer was an action for personal injury based on breach of warranty and strict liability under subs. (4) and (5) (c). *Davis v. Mercier-Freres*, 368 F. Supp. 498 (1973).

Service upon a nonresident defendant's father at the father's residence was insufficient for the exercise of personal jurisdiction over the nonresident, despite claimed actual notice, when no attempt was made to comply with s. 345.09. *Chilcote v. Sher-tzer*, 372 F. Supp. 86 (1974).

The court had jurisdiction over an insurer under sub. (1) (d) based on settlement negotiations conducted by an adjuster, and the insurer was estopped from asserting its no-action clause. *Kirchen v. Orth*, 390 F. Supp. 313 (1975).

The court had in-personam jurisdiction by virtue of sub. (5) (b) and (e) when the defendant made initial contact with the plaintiff, sent its president to Milwaukee to solicit the plaintiff's participation in the transaction, delivered documentation of title to the subject property to the plaintiff in Milwaukee, accepted payment in Milwaukee, and executed a lease agreement in Milwaukee. *Ridge Leasing Corp. v. Monarch Royalty, Inc.* 392 F. Supp. 573 (1975).

To determine whether a particular nonresident is "doing business" within this state, the court must consider the party's overall activities within the state, past and present, not at some fixed point in time. *Modern Cycle Sales, Inc. v. Burkhardt-Larson Co.* 395 F. Supp. 587 (1975).

Actions of out-of-state police officials in continuously soliciting the plaintiff's arrest by a "fugitive from justice notice" entered into a FBI computer data base, representing to Wisconsin authorities that extradition was desired, and requesting that the plaintiff be arrested was sufficient minimum contact with Wisconsin to permit the exercise of personal jurisdiction. *Maney v. Ratchiff*, 399 F. Supp. 760 (1975).

Infrequent use of Wisconsin roads by an Idaho trucking corporation did not constitute "continuous and systematic" activity necessary to confer jurisdiction under this section. *Ladwig v. Trucks Ins. Exch.* 498 F. Supp. 161 (1980).

A foreign corporation is not subject to jurisdiction in Wisconsin when the sole basis for assertion of jurisdiction was unilateral activity of the resident plaintiff. *Jadair, Inc. v. Walt Keeler Co., Inc.* 508 F. Supp. 879 (1981).

In applying the test under sub. (1) (d), the court looks to the defendant's general contacts with the forum state, not merely its contacts arising out of the specific transaction at issue. *Jadair v. Van Lott, Inc.* 512 F. Supp. 1141 (1981).

The defendant's attorney's delivery of checks in the state was insufficient contact to confer jurisdiction under this section. *Sed, Inc. v. Bohager/Goodhues, Inc.* 538 F. Supp. 196 (1982).

Contracts for services and contracts for goods are distinguished. *L.B. Sales Corp. v. Dial Mfg., Inc.* 593 F. Supp. 290 (1984).

A single sale in the state was insufficient contact to confer personal jurisdiction. *Uni-Bond, LTD. v. Schultz*, 607 F. Supp. 1361 (1985).

A parent-subsidiary relationship is sufficient to confer jurisdiction over the parent for long-arm purposes so long as the subsidiary carries on sufficient activities in the state. *Hayeland v. Jaques*, 847 F. Supp. 630 (1994).

This section is intended to reach to the fullest extent allowed under the due process clause. *Farby Glove & Mitten Co. v. Spitzer*, 908 F. Supp. 625 (1995).

Foreseeability that the defendant's actions in one state may cause injury in Wisconsin does not amount to causing a local act. The consequences of an act alone do not establish jurisdiction over the defendant under sub. (3). *Nelson v. Bulso*, 979 F. Supp. 1239 (1997).

In order for solicitation activities to trigger personal jurisdiction, the solicitor must anticipate receiving a financial benefit from the activity. *Knot Just Beads v. Knot Just Beads, Inc.* 217 F. Supp. 2d 932 (2002).

The fiduciary shield doctrine, which denies personal jurisdiction over an individual whose presence and activity in a state were solely on behalf of an employer or other principal, was not found to be a part of Wisconsin law. *Norkol/Fibercore, Inc. v. Grubb*, 279 F. 3d 993 (2003).

The state may not assert quasi in rem jurisdiction over an insurance company's contractual obligations to defend and indemnify its insured. 64 MLR 374 (1980).

Stacking the deck: Wisconsin's application of Leflar's choice-influencing considerations to torts choice-of-law cases. *White*, 1985 WLR 401.

Wisconsin's 'Stream of Commerce' Theory of Personal Jurisdiction. *La Fave*. Wis. Law. Nov. 2002.

801.06 Personal jurisdiction, grounds for without service of summons. A court of this state having jurisdiction of the subject matter may, without a summons having been served upon a person, exercise jurisdiction in an action over a person with respect to any counterclaim asserted against that person in an action which the person has commenced in this state and also over any person who appears in the action and waives the defense of lack of jurisdiction over his or her person as provided in s. 802.06 (8). An appearance to contest the basis for in rem or quasi in rem jurisdiction under s. 802.06 (2) (a) 3. without seeking any other relief does not constitute an appearance within the meaning of this section.

History: Sup. Ct. Order, 67 Wis. 2d 585, 596 (1975); 1975 c. 218; 1993 a. 213.

801.07 Jurisdiction in rem or quasi in rem, grounds for generally. A court of this state having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the grounds stated in this section. A judgment in rem or quasi in rem may affect the interests of a defendant in the status, property or thing acted upon only if a summons has been served upon the defendant pursuant to s. 801.12. Jurisdiction in rem or quasi in rem may be invoked in any of the following cases:

(1) When the subject of the action is real or personal property in this state and the defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien

therein. This subsection shall apply when any such defendant is unknown.

(2) When the action is to foreclose, redeem from or satisfy a mortgage, claim or lien upon real estate within this state.

(3) When the defendant has property within this state which has been attached or has a debtor within the state who has been garnisheed. Jurisdiction under this subsection may be independent of or supplementary to jurisdiction acquired under subs. (1) and (2).

(4) When the action is to declare property within this state a public nuisance.

(5) When the action is an action affecting the family under s. 767.02 (1) (a) to (d) and when the residence requirements of s. 767.05 (1m) have been met, a court having subject matter jurisdiction may exercise jurisdiction quasi in rem to determine questions of status if the respondent has been served under s. 801.11 (1). Notwithstanding s. 801.11 (intro.), the court need not have grounds for personal jurisdiction under s. 801.05 in order to make a determination of the status of a marriage under this subsection.

History: Sup. Ct. Order, 67 Wis. 2d 585, 597 (1975), 758; 1977 c. 418; 1979 c. 32 s. 92 (4); 1979 c. 352 s. 39; 1993 a. 213; 2001 a. 42.

This section requires that in rem actions under s. 161.555 [now s. 961.555] must be commenced against a person having an interest in property seized under s. 161.55 [now s. 961.55]. *State v. One 1973 Cadillac*, 95 Wis. 2d 641, 291 N.W.2d 626 (Ct. App. 1980).

For quasi in rem jurisdiction under sub. (5), minimum contacts between the defendant and the state are necessary. *Mendez v. Hernandez-Mendez*, 213 Wis. 2d 217, 570 N.W.2d 563 (Ct. App. 1997).

Sub. (3) applies when a settlement offer is made at least 20 days before trial. When a dispute is resolved by arbitration there is no trial, and sub. (3) does not apply. *Lane v. Williams*, 2000 WI App 263, 240 Wis. 2d 255, 621 N.W.2d 922.

The minimum contacts standard for quasi in rem jurisdiction is discussed. *Shaffer v. Heitner*, 433 U.S. 186 (1977).

Posting a notice of eviction on an apartment door did not satisfy minimum requirements of due process. *Greene v. Lindsey*, 456 U.S. 444 (1982).

801.08 Objection to personal jurisdiction. (1) All issues of fact and law raised by an objection to the court's jurisdiction over the person or property as provided by s. 802.06 (2) shall be heard by the court without a jury in advance of any issue going to the merits of the case. If, after such a hearing on the objection, the court decides that it has jurisdiction, the case may proceed on the merits; if the court decides that it lacks jurisdiction, the defendant shall be given the relief required by such decision.

(2) Factual determinations made by the court in determining the question of personal jurisdiction over the defendant shall not be binding on the parties in the trial of the action on the merits.

(3) No guardian or guardian ad litem may, except as provided in this subsection, waive objection to jurisdiction over the person of the ward. If no objection to the jurisdiction of the court over the person of the ward is raised pursuant to s. 802.06 (2), the service of an answer or motion by a guardian or guardian ad litem followed by a hearing or trial shall be equivalent to an appearance and waiver of the defense of lack of jurisdiction over the person of the ward.

History: Sup. Ct. Order, 67 Wis. 2d 585, 598 (1975); 1979 c. 110 s. 60 (7); Sup. Ct. Order, 101 Wis. 2d xi.

Judicial Council Note, 1981: The last sentence of sub. (1) has been repealed because it erroneously implied that non-final orders deciding jurisdictional questions were appealable as of right. This has not been true since ch. 187, Laws of 1977 repealed s. 817.33 (3) (f), Wis. Stats. (1975) and created s. 808.03 (1), Wis. Stats. (1977). *Heaton v. Independent Mortuary Corp.* 97 Wis. 2d 379, 294 N.W.2d 15 (1980). [Re Order effective July 1, 1981]

A jurisdiction dispute may not be resolved on motion. *Merco Distributing Corp. v. O & R Engines, Inc.* 71 Wis. 2d 792, 239 N.W.2d 97 (1976).

An order denying a motion to dismiss for lack of personal jurisdiction is appealable by permission under s. 808.03 (2). *Heaton v. Independent Mortuary Corp.* 97 Wis. 2d 379, 294 N.W.2d 15 (1980).

An order denying a motion to dismiss based on jurisdiction under s. 801.08 (1) is not a final order and is not appealable as of right under s. 808.03 (1). *Grukowski v. DOT* 97 Wis. 2d 615, 294 N.W.2d 43 (Ct. App. 1980).

The trial court erred in denying plaintiff's request for an evidentiary hearing. The plaintiff has no burden to prove jurisdictional facts prior to a hearing. *Henderson v. Milex Products, Inc.* 125 Wis. 2d 141, 370 N.W.2d 291 (Ct. App. 1985).

Conducting pretrial discovery does not constitute "going to the merits of the case" under sub. (1) and does not waive an objection raised under s. 802.06 (2). *Honeycrest Farms v. Brave Harvestore Systems*, 200 Wis. 2d 256, 546 N.W.2d 192 (Ct. App. 1996), 95-1789.

Address (Case Classification Type): (Code No.)
 City, State Zip Code
 , Defendant

Dated:, (year)

Signed:
 A. B., Plaintiff
 or
 E. F., Plaintiff’s Attorney
 State Bar No.:
 Address:
 City, State Zip Code:
 Phone No:

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you.

Within (20) (45) days of receiving this summons, you must respond with a written demand for a copy of the complaint. The demand must be sent or delivered to the court, whose address is, and to, Plaintiff’s attorney, whose address is, You may have an attorney help or represent you.

If you do not demand a copy of the complaint within (20) (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated:, (year)

Signed:
 A. B., Plaintiff
 or
 E. F., Plaintiff’s Attorney
 State Bar No.:
 Address:
 City, State Zip Code:
 Phone No.:

(3) NO PERSONAL SERVICE; COMPLAINT SERVED AT THE SAME TIME.

STATE OF WISCONSIN CIRCUIT COURT : COUNTY

A. B.
 Address
 City, State Zip Code File No.
 , Plaintiff
 vs. S U M M O N S
 C. D.
 Address (Case Classification Type): (Code No.)
 City, State Zip Code
 , Defendant

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is also served upon you, states the nature and basis of the legal action.

Within (20) (45) days after, (year), you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is, and to, Plaintiff’s attorney, whose address is, You may have an attorney help or represent you.

If you do not provide a proper answer within(20) (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

(4) NO PERSONAL SERVICE; COMPLAINT NOT SERVED AT THE SAME TIME.

STATE OF WISCONSIN CIRCUIT COURT: COUNTY

A. B.
 Address
 City, State Zip Code File No.
 , Plaintiff
 vs. S U M M O N S
 C. D.
 Address (Case Classification Type): (Code No.)
 City, State Zip Code
 , Defendant

THE STATE OF WISCONSIN, To each person named above as a Defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you.

Within (20) (45) days after, (year), you must respond with a written demand for a copy of the complaint. The demand must be sent or delivered to the court, whose address is, and to, Plaintiff’s attorney, whose address is, You may have an attorney help or represent you.

If you do not demand a copy of the complaint within (20) (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated:, (year)

Signed:
 A. B., Plaintiff
 or
 E. F., Plaintiff’s Attorney
 State Bar No.:
 Address:
 City, State Zip Code:
 Phone No:

History: 1983 a. 323; Sup Ct. Order, 171 Wis. 2d xix (1992); 1997 a. 187, 250; 1999 a. 32, 186; 2001 a. 16.

801.10 Summons, by whom served. (1) WHO MAY SERVE. An authenticated copy of the summons may be served by any adult resident of the state where service is made who is not a party to the action. Service shall be made with reasonable diligence.

(2) ENDORSEMENT. At the time of service, the person who serves a copy of the summons shall sign the summons and shall indicate thereon the time and date, place and manner of service and upon whom service was made. If the server is a sheriff or deputy sheriff, the server’s official title shall be stated. Failure to make the endorsement shall not invalidate a service but the server shall not collect fees for the service.

(3) PROOF OF SERVICE. The person making service shall make and deliver proof of service to the person on whose behalf service was made who shall promptly file such proof of service. Failure

to make, deliver, or file proof of service shall not affect the validity of the service.

(4) **PROOF IF SERVICE CHALLENGED.** If the defendant appears in the action and challenges the service of summons upon the defendant, proof of service shall be as follows:

(a) Personal or substituted personal service shall be proved by the affidavit of the server indicating the time and date, place and manner of service, that the server is an adult resident of the state of service not a party to the action, that the server knew the person served to be the defendant named in the summons and that the server delivered to and left with the defendant an authenticated copy of the summons. If the defendant is not personally served, the server shall state in the affidavit when, where and with whom the copy was left, and shall state such facts as show reasonable diligence in attempting to effect personal service on the defendant. If the copy of the summons is served by a sheriff or deputy sheriff of the county in this state where the defendant was found, proof may be by the sheriff's or deputy's certificate of service indicating time and date, place, manner of service and, if the defendant is not personally served, the information required in the preceding sentence. The affidavit or certificate constituting proof of service under this paragraph may be made on an authenticated copy of the summons or as a separate document.

(b) Service by publication shall be proved by the affidavit of the publisher or printer, or the foreman or principal clerk, stating that the summons was published and specifying the date of each insertion, and by an affidavit of mailing of an authenticated copy of the summons, with the complaint or notice of the object of the action, as the case may require, made by the person who mailed the same.

(c) The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

History: Sup. Ct. Order, 67 Wis. 2d 585, 600 (1975); 1975 c. 218; Sup. Ct. Order, 92 Wis. 2d xiii (1979).

Judicial Council Committee's Note, 1979: Sub. (2) is amended to clarify that the individual who serves the summons on behalf of the plaintiff under the procedures in the Wisconsin Rules of Civil Procedure must indicate on the copy of the summons served both the time and date of service. There is presently a lack of uniformity of interpretation in Wisconsin of the term "time" in 801.10 (2). Some jurisdictions interpret it to include time and date of service while other jurisdictions interpret it as only the date of service. Clarifying that both the time and date of service must be indicated in the serving of the summons will insure that this potentially valuable information is noted on the served copy of every summons in Wisconsin.

Sub. (4) (a) is amended to also apply the requirement for indicating time and date of service to the affidavits and certificates of service used when proof of service is challenged. [Re Order effective Jan. 1, 1980]

A party is required to show strict compliance with the requirements of this section when service is challenged. *Dietrich v. Elliot*, 190 Wis. 2d 816, 528 N.W.2d 17 (Ct. App. 1995).

Service by a nonresident constitutes a fundamental defect compelling dismissal for lack of jurisdiction. *Bendimez v. Neidermire*, 222 Wis. 2d 356, 588 N.W.2d 55 (Ct. App. 1998).

Sub. (4) does not require the affiant to have first hand knowledge of how the documents were authenticated, nor does it require that the affiant's statements must be unqualified; it requires that the affiant affirm that an authenticated copy of the summons was served. *State v. Boyd*, 2000 WI App 208, 238 Wis. 2d 693, 618 N.W.2d 251.

The trial court court was not required to find excusable neglect for failing to file a timely answer due to a process server's failure to endorse and date the summons and complaint as required under s. 801.10 (2) when the failure to answer in a timely manner amounted to nothing more than carelessness and inattentiveness on the part of the parties involved. *Williams Comer Investors, LLC v. Areawide Cellular, LLC*, 2004 WI App 27, 269 Wis. 2d 682, 676 N.W.2d 168, 03–0824.

801.11 Personal jurisdiction, manner of serving summons for. A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:

(1) **NATURAL PERSON.** Except as provided in sub. (2) upon a natural person:

(a) By personally serving the summons upon the defendant either within or without this state.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:

1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;

1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or

2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.

(c) If with reasonable diligence the defendant cannot be served under par. (a) or (b), service may be made by publication of the summons as a class 3 notice, under ch. 985, and by mailing. If the defendant's post-office address is known or can with reasonable diligence be ascertained, there shall be mailed to the defendant, at or immediately prior to the first publication, a copy of the summons and a copy of the complaint. The mailing may be omitted if the post-office address cannot be ascertained with reasonable diligence.

(d) In any case, by serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(2) **NATURAL PERSON UNDER DISABILITY.** Upon a natural person under disability by serving the summons in any manner prescribed in sub. (1) upon such person under disability and, in addition, where required by par. (a) or (b), upon a person therein designated. A minor 14 years of age or older who is not mentally incompetent and not otherwise under guardianship is not a person under disability for purposes of this subsection.

(a) Where the person under disability is a minor under the age of 14 years, summons shall be served separately in any manner prescribed in sub. (1) upon a parent or guardian having custody of the child, or if there is none, upon any other person having the care and control of the child. If there is no parent, guardian or other person having care and control of the child when service is made upon the child, then service of the summons shall also be made upon the guardian ad litem after appointment under s. 803.01.

(b) Where the person under disability is known by the plaintiff to be under guardianship of any kind, a summons shall be served separately upon the guardian in any manner prescribed in sub. (1), (5) or (6). If no guardian has been appointed when service is made upon a person known to the plaintiff to be incompetent to have charge of the person's affairs, then service of the summons shall be made upon the guardian ad litem after appointment under s. 803.01.

(3) **STATE.** Upon the state, by delivering a copy of the summons and of the complaint to the attorney general or leaving them at the attorney general's office in the capitol with an assistant or clerk.

(4) **OTHER POLITICAL CORPORATIONS OR BODIES POLITIC.** (a) Upon a political corporation or other body politic, by personally serving any of the specified officers, directors, or agents:

1. If the action is against a county, the chairperson of the county board or the county clerk;

2. If against a town, the chairperson or clerk thereof;

3. If against a city, the mayor, city manager or clerk thereof;

4. If against a village, the president or clerk thereof;

5. If against a technical college district, the district board chairperson or secretary thereof;

6. If against a school district or school board, the president or clerk thereof; and

7. If against any other body politic, an officer, director, or managing agent thereof.

(b) In lieu of delivering the copy of the summons to the person specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(5) DOMESTIC OR FOREIGN CORPORATIONS OR LIMITED LIABILITY COMPANIES, GENERALLY. Upon a domestic or foreign corporation or domestic or foreign limited liability company:

(a) By personally serving the summons upon an officer, director or managing agent of the corporation or limited liability company either within or without this state. In lieu of delivering the copy of the summons to the officer specified, the copy may be left in the office of such officer, director or managing agent with the person who is apparently in charge of the office.

(b) If with reasonable diligence the defendant cannot be served under par. (a), then the summons may be served upon an officer, director or managing agent of the corporation or limited liability company by publication and mailing as provided in sub. (1).

(c) By serving the summons in a manner specified by any other statute upon the defendant or upon an agent authorized by appointment or by law to accept service of the summons for the defendant.

(d) If against any insurer, to any agent of the insurer as defined by s. 628.02. Service upon an agent of the insurer is not valid unless a copy of the summons and proof of service is sent by registered mail to the principal place of business of the insurer within 5 days after service upon the agent. Service upon any insurer may also be made under par. (a).

(6) PARTNERS AND PARTNERSHIPS. A summons shall be served individually upon each general partner known to the plaintiff by service in any manner prescribed in sub. (1), (2) or (5) where the claim sued upon arises out of or relates to partnership activities within this state sufficient to subject a defendant to personal jurisdiction under s. 801.05 (2) to (10). A judgment rendered under such circumstances is a binding adjudication individually against each partner so served and is a binding adjudication against the partnership as to its assets anywhere.

History: Sup. Ct. Order, 67 Wis. 2d 585, 602 (1975); 1975 c. 218; 1977 c. 339 s. 43; 1979 c. 89, 102, 177; 1983 a. 192 s. 303 (2); 1985 a. 225; Sup. Ct. Order, 130 Wis. 2d xix (1986); 1993 a. 112, 184, 265, 399, 491; 1997 a. 140; 1999 a. 32.

Cross-reference: As to service on corporation, see also s. 180.0504.

Judicial Council Note, 1986: Sub. (1) (b) is amended to permit substituted service upon residents of other states. Service upon nonresidents may be made either as provided for Wisconsin residents or in accordance with the substituted service rule of the state wherein service is made. [Re Order eff. 7-1-86]

There is no requirement in cases of substituted service that the affidavit recite that the process server used "reasonable diligence" in attempting to make personal service, but substituted service after 2 calls when the defendant was not found, with no effort to learn where he was, was not sufficient to support jurisdiction. *Heaston v. Austin*, 47 Wis. 2d 67, 176 N.W.2d 309 (1970).

When a village was a defendant, service was void when it was made upon the clerk's spouse in the clerk's absence. *Town of Washington v. Village of Cecil*, 53 Wis. 2d 710, 193 N.W.2d 674 (1972).

"Apparently in charge of the office" in sub. (5) (a) refers to what is apparent to the process server. When a receptionist referred the process server to her superior, who did not send the server to the proper office, the server could serve him, particularly since the superior had accepted service of process in other actions without objection by the company. *Keske v. Square D Co.* 58 Wis. 2d 307, 206 N.W.2d 189 (1973).

When personal jurisdiction is challenged under the "long arm" statutes, the burden is on the plaintiff to prove prima facie the facts supporting jurisdiction. A plaintiff who relies on sub. (5) is required to establish as a predicate that the defendant entered into some consensual agreement with the plaintiff that contemplated a substantial contact in Wisconsin. *Afram v. Balfour, Maclaine, Inc.* 63 Wis. 2d 702, 218 N.W.2d 288 (1974).

No presumption of due service was raised when an affidavit of service under sub. (5) (a) did not identify the person served as the one specified in sub. (5) (a). *Danielson v. Brody Seating Co.* 71 Wis. 2d 424, 238 N.W.2d 531 (1976).

The prerequisite "due diligence" for service by publication was not established, despite the sheriff's affidavit, when a husband could have ascertained his wife's address by contacting any one of several relatives or in-laws. *West v. West*, 82 Wis. 2d 158, 262 N.W.2d 87 (1978).

A county civil service commission is a "body politic" under sub. (4) (a) 7. *Watkins v. Milwaukee County Civil Service Comm.* 88 Wis. 2d 411, 276 N.W.2d 775 (1979).

The exact identity and job title of the person upon whom service was made was not critical to whether the person was "apparently in charge of office" under sub. (5) (a). *Horrigan v. State Farm Ins. Co.* 106 Wis. 2d 675, 317 N.W.2d 474 (1982).

"Reasonable diligence" under sub. (1) is discussed. *Welty v. Heggy*, 124 Wis. 2d 318, 369 N.W.2d 763 (Ct. App. 1985).

Indian tribal sovereignty is not infringed by service of process in a state action made on tribal lands. *Landerman v. Martin*, 191 Wis. 2d 788, 530 N.W.2d 62 (Ct. App. 1995).

Service of process on some of the partners in a general partnership is sufficient to properly commence a civil action against the partnership that will be binding on the partnership assets and the partners served. *CH2M Hill, Inc. v. Black & Veatch*, 206 Wis. 2d 369, 557 N.W.2d 829 (Ct. App. 1996).

The existence of a parent–subsidiary corporate relationship does not automatically establish the subsidiary as an agent of the parent for purposes of receiving process. *Prom v. Sumitomo Rubber Industries, Ltd.* 224 Wis. 2d 743, 592 N.W.2d 657 (Ct. App. 1999).

A corporation whose offices were located on the 23rd floor of an office building was not properly served under sub. (5) (a) when the papers were left with a security guard in the building lobby who stated that he was authorized to accept service. *Bar Code Resources v. Ameritech, Inc.* 229 Wis. 2d 287, 599 N.W.2d 872 (Ct. App. 1999).

Service on a limited partnership is governed by sub. (6), not ch. 179. Sub. (6) requires service upon all the general partners known to the plaintiff. When the only person served was a maintenance man, service was insufficient. *Carmain v. Affiliated Capital Corporation*, 2002 WI App 271, 258 Wis. 2d 378, 654 N.W.2d 265.

Neither s. 801.02 (1) nor s. 801.11 allows a defendant who is being sued in a dual capacity, personally and officially, to be served in only one of those capacities. When an officer of a company received service on behalf of the company, receiving one copy of a summons and complaint, but was not served as an individual, although named individually, there was no jurisdiction over him as an individual. *Useni v. Boudron*, 2003 WI App 98, 264 Wis. 2d 783, 662 N.W.2d 672, 02-1475.

Personal jurisdiction over a body politic may be obtained by service of the summons and complaint on an officer, director, or managing agent, or substitute service on a "person who is apparently in charge of the office." Service on a nonparty, even when it occurs erroneously in reliance on the mistaken direction of a person in the office of the defendant, does not constitute service on the defendant. *Hagen v. City of Milwaukee Employee's Retirement System Annuity and Pension Board*, 2003 WI 56, 262 Wis. 2d 113, 663 N.W.2d 268, 01-3198.

Admission of service by an assistant attorney general or a clerk specifically designated for that purpose by the attorney general will constitute service of process within the meaning of (3). 63 Atty. Gen. 467.

Service on a nonresident defendant's father at the father's residence was insufficient for the exercise of personal jurisdiction over the nonresident, despite claimed actual notice, when no attempt was made to comply with s. 345.09. *Chilcote v. Sherzter*, 372 F. Supp. 86 (1974).

801.12 Jurisdiction in rem or quasi in rem, manner of serving summons for; notice of object of action. (1) A court of this state exercising jurisdiction in rem or quasi in rem pursuant to s. 801.07 may affect the interests of a defendant in such action only if a summons and either a copy of the complaint or a notice of the object of the action under sub. (2) have been served upon the defendant as follows:

(a) If the defendant is known, defendant may be served in the manner prescribed for service of a summons in s. 801.11, but service in such a case shall not bind the defendant personally to the jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(b) If the defendant is unknown the summons may be served by publication thereof as a class 3 notice, under ch. 985.

(2) The notice of object of action shall be subscribed by the plaintiff or attorney and shall state the general object of the action, a brief description of all the property affected by it, if it affects specific real or personal property, the fact that no personal claim is made against such defendant, and that a copy of the complaint will be delivered personally or by mail to such defendant upon request made within the time fixed in s. 801.09 (2). If a defendant upon whom such notice is served unreasonably defends the action the defendant shall pay costs to the plaintiff.

History: Sup. Ct. Order, 67 Wis. 2d 585, 606 (1975); 1975 c. 218.

801.13 Summons; when deemed served. A summons is deemed served as follows:

(1) A summons served personally upon the defendant or by substituted personal service upon another authorized to accept service of the summons for the defendant is deemed served on the day of service.

(2) A summons served by publication is deemed served on the first day of required publication.

History: Sup. Ct. Order, 67 Wis. 2d 585, 607 (1975).

801.14 Service and filing of pleadings and other papers. (1) Every order required by its terms to be served, every pleading unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, undertaking, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief

against them shall be served upon them in the manner provided for service of summons in s. 801.11.

(2) Whenever under these statutes, service of pleadings and other papers is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party in person is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy or by mailing it to the last-known address, or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this section means: handing it to the attorney or to the party; transmitting a copy of the paper by facsimile machine to his or her office; or leaving it at his or her office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his or her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service by facsimile is complete upon transmission. The first sentence of this subsection shall not apply to service of a summons or of any process of court or of any paper to bring a party into contempt of court.

(3) In any action in which there are unusually large numbers of defendants, the court, upon motion or on its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(4) All papers after the summons required to be served upon a party, except as provided in s. 804.01 (6), shall be filed with the court within a reasonable time after service. The filing of any paper required to be served constitutes a certification by the party or attorney effecting the filing that a copy of such paper has been timely served on all parties required to be served, except as the person effecting the filing may otherwise stipulate in writing.

(6) If an action pertaining to the subject matter of the compact authorized under s. 304.16 may affect the powers, responsibilities, or actions of the interstate commission, as defined in s. 304.16 (2) (f), the plaintiff shall deliver or mail a copy of the complaint to the interstate commission at its last-known address.

History: Sup. Ct. Order, 67 Wis. 2d 585, 607 (1975); 1975 c. 218; Sup. Ct. Order, 130 Wis. 2d xix (1986); Sup. Ct. Order, 161 Wis. 2d xvii (1991); 2001 a. 96.

Judicial Council Note, 1986: Sub. (4) is amended by insertion of a cross-reference to s. 804.01 (6), providing that discovery documents need not be filed with the court unless the court so orders. [Re Order eff. 7-1-86]

Judicial Council Note, 1991: Sub. (2) is amended to clarify that facsimile transmission can be used to serve pleadings and other papers. Such service is deemed complete upon transmission. The change is not intended to expand the permissible means of serving a summons or writ conferring court jurisdiction under s. 799.12 and ch. 801, stats. [Re Order eff. 7-1-91]

Once an action has been commenced, service of the summons and complaint has been made on the defendant, and an attorney has appeared on behalf of the defendant, an amended complaint may be served on the defendant's attorney. *Bell v. Employers Mutual Casualty Co.* 198 Wis. 2d 347, 541 N.W.2d 824 (Ct. App. 1995), 095-0301.

A motion to dismiss with prejudice cannot be heard ex parte and should be granted only on finding egregious conduct or bad faith. Failure to obtain personal service with due diligence does not amount to egregious conduct or bad faith. *Haselow v. Gauthier*, 212 Wis. 2d 580, 569 N.W.2d 97 (Ct. App. 1997).

An amended complaint that makes no reference to or incorporates any of the original complaint supercedes the original complaint when the amended complaint is filed in court. When such a complaint was filed prior to the time for answering the original complaint had run, it was improper to enter a default judgment on the original complaint. *Holman v. Family Health Plan*, 227 Wis. 2d 478, 596 N.W.2d 358 (1999).

A party in default for failing to answer an original complaint cannot answer an amended complaint, thereby attempting to cure its default, unless the amended complaint relates to a new or additional claim for relief. *Ness v. Digital Dial Communications, Inc.* 227 Wis. 2d 592, 596 N.W.2d 365 (1999).

A receptionist who accepted the receipt of pleadings delivered to an attorney's office by a delivery service was a person in charge of the office within the meaning of sub. (2), and the papers had been properly "delivered." *Varda v. General Motors Corporation*, 2001 WI App 89, 242 Wis. 2d 756, 626 N.W.2d 346.

A circuit court may not enter a default judgment against a defendant on grounds that the defendant failed to file an answer with the court "within a reasonable time after service" under sub. (4) unless the court first determines that the late filing prejudiced either the plaintiff or the court. *Split Rock Hardwoods, Inc. v. Lumber Liquidators, Inc.* 2002 WI 66, 253 Wis. 2d 238, 646 N.W.2d 19.

801.145 Form of papers. (1) Except for exhibits and wills, the size of all papers filed in court shall be no larger than 8 1/2 inches by 11 inches.

(2) The clerk of circuit court or register in probate shall return any paper not in conformity with sub. (1) to the person or party attempting to file it.

History: Sup. Ct. Order, 120 Wis. 2d xv (1984).

801.15 Time. (1) (a) In this subsection, "holiday" means any day which is a holiday provided in s. 230.35 (4) (a) or a statewide legal holiday provided in s. 895.20 or both, and a full day on Good Friday.

(b) Notwithstanding ss. 985.09 and 990.001 (4), in computing any period of time prescribed or allowed by chs. 801 to 847, by any other statute governing actions and special proceedings, or by order of court, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a day the clerk of courts office is closed. When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation.

(2) (a) When an act is required to be done at or within a specified time, the court may order the period enlarged but only on motion for cause shown and upon just terms. The 90 day period under s. 801.02 may not be enlarged. If the motion is made after the expiration of the specified time, it shall not be granted unless the court finds that the failure to act was the result of excusable neglect. The order of enlargement shall recite by its terms or by reference to an affidavit in the record the grounds for granting the motion.

(b) The time within which a motion challenging the sufficiency of the evidence or for a new trial must be decided shall not be enlarged except for good cause. The order of extension must be made prior to the expiration of the initial decision period.

(c) The time for initiating an appeal under s. 808.04, for deciding motions after verdict under s. 805.16 (3), and for making motions for reconsideration under s. 805.17 (3) or for relief from judgment or order under s. 48.46 (2) or 806.07 may not be enlarged.

(4) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time. All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte.

(5) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party:

(a) If the notice or paper is served by mail, 3 days shall be added to the prescribed period.

(b) If the notice or paper is served by facsimile transmission and such transmission is completed between 5 p.m. and midnight, 1 day shall be added to the prescribed period.

History: Sup. Ct. Order, 67 Wis. 2d 585, 610 (1975); 1975 c. 218; Sup. Ct. Order, 73 Wis. 2d xxxi (1976); 1977 c. 187 s. 135; 1977 c. 449; 1979 c. 89; 1983 a. 192 s. 304; 1985 a. 145; Sup. Ct. Order, 130 Wis. 2d xi (1986); 1985 a. 332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); Sup. Ct. Order, 146 Wis. 2d xxxiii (1988); Sup. Ct. Order,

160 Wis. 2d xiv (1991); Sup. Ct. Order, 161 Wis. 2d xvii (1991); Sup. Ct. Order No. 94–05, 183 Wis. 2d xix; 1997 a. 187.

Cross-reference: See s. 32.05 (4) for exception to provision for added time in case of mailing.

Law Revision Committee Note, 1985: [Sub. (1)] Under the current statute, the time period specified by law or by a court relating to a court action or special proceeding is extended if the last day of the time period falls on a Saturday, Sunday or legal holiday. This amendment adds Good Friday, Christmas eve and New Year's eve. The afternoon of Good Friday and the full day on December 24 and 31 are holidays for state employees, and the amendment will permit clerks to close their offices at these times. [85 Act 145]

Judicial Council Committee's Note, 1976: The procedure under s. 801.15 (2) (a) for enlarging the period in which an act is required to be done under the rules of civil procedure cannot be used to enlarge the 60–day period under s. 801.02. See also s. 802.06 (2) (e) and (8).

Par. (2) (b) and (c) are independent provisions. The enlargement of time “for good cause” provision in par. (b) does not apply to the time for appeal under s. 817.01, for motion after verdict under s. 805.16, and for relief from judgment under s. 806.07 as such a result would substantially impair the finality of judgments. The word “extended” is replaced by the word “enlarged” in par. (c) to comply with similar language in pars. (2) (a) and (b). [Re Order effective Jan. 1, 1977]

Judicial Council Note, 1986: Sub. (1) is amended by extending from 7 to 11 days the periods from which Saturdays, Sundays and legal holidays are excluded. The change conforms to that made in Rule 6 (a), F.R.C.P. in 1985. [Re Order eff. 7–1–86]

Judicial Council Note, 1986: Sub. (2) (c) is amended to clarify that, while the time for deciding motions after verdict may not be enlarged, the time for filing and hearing such motions may be enlarged by the court under revised s. 805.16 (1) and (2). [Re Order eff. 7–1–87]

Judicial Council Note, 1991: The amendment to sub. (2) (c) prohibits the court from extending the time for making reconsideration motions under s. 805.17 (3). [Re Order eff. 7–1–91]

Judicial Council Note, 1991: Sub. (5) (b) is created to allow one extra day to respond to papers served by facsimile transmission after normal business hours. Additional response time may be available under the computation rules of sub. (1) (b) if papers are so served on weekends or holidays. [Re Order eff. 7–1–91]

Judicial Council Note, 1994: Subsection (1) (b) is amended by excluding the last day of a time period from the computation if the clerk of courts office is closed all day.

A court has no authority to enlarge the time in which to file a complaint. *Pulchinski v. Strnad*, 88 Wis. 2d 423, 276 N.W.2d 781 (1979).

Error based on late service and filing of an affidavit was waived by the failure to object at a hearing. *In re Spring Valley Meats, Inc.* 94 Wis. 2d 600, 288 N.W.2d 852 (1980).

Notice of entry of judgment was “given” under s. 806.06 (5) when it was mailed. Sub. (5) was inapplicable. *Bruns v. Munitz*, 97 Wis. 2d 742, 295 N.W.2d 112 (Ct. App. 1980).

The trial court abused its discretion in enlarging the time to file an answer when the answer was served 9 days after the deadline. *Hedtcke v. Sentry Ins. Co.* 109 Wis. 2d 461, 326 N.W.2d 727 (1982).

Time computations under ss. 32.05 (10) (a) and 32.06 (10) are controlled by s. 801.15 (1), not s. 990.001 (4). *In Matter of Petition of Electric Power Co.* 110 Wis. 2d 649, 329 N.W.2d 186 (1983).

Service of an answer was timely under the terms of a courtesy agreement. *Oostburg Bank v. United Savings*, 130 Wis. 2d 4, 386 N.W.2d 53 (1986).

Time periods under s. 805.16 may not be enlarged by showing excusable neglect under s. 801.15 (2) (a). *Brookhouse v. State Farm Mutual Insurance Co.* 130 Wis. 2d 166, 387 N.W.2d 82 (Ct. App. 1986).

The trial court lost jurisdiction to decide motions after verdict by consecutively extending the time for its decision under sub. (2) (b). *Ford Motor Co. v. Lyons*, 137 Wis. 2d 397, 405 N.W.2d 354 (Ct. App. 1987).

Because a courtesy agreement was made after default, the court did not abuse its discretion by insisting on compliance with sub. (2) (a). *Clark County v. B.T.U. Structures*, 144 Wis. 2d 11, 422 N.W.2d 910 (Ct. App. 1988).

The trial court had discretion to allow a jury trial when fees under s. 814.61 (4) were not timely paid. *Chitwood v. A. O. Smith Harvestore*, 170 Wis. 2d 622, 489 N.W.2d 697 (Ct. App. 1992).

While clerical error is not always excusable, it is not as a matter of law inexcusable neglect. *Sentry Insurance v. Royal Insurance Co.* 196 Wis. 2d 907, 539 N.W.2d 911 (Ct. App. 1995), 94–3428.

Trial courts have discretion to shorten the 5 day notice requirement for motions. *Schopper v. Gehring*, 210 Wis. 2d 209, 565 N.W.2d 187 (Ct. App. 1997).

Sub. (2) (a) is applicable to excusable neglect by a trial judge. *State v. Elliot*, 203 Wis. 2d 95, 551 N.W.2d 850 (Ct. App. 1996).

Excusable neglect is conduct that might have been the act of a reasonably prudent person under the same circumstances. A court must look beyond the cause of the neglect to the interests of justice, considering both the need to afford litigants a day in court and to ensure prompt adjudication. Whether the dilatory party acted in good faith, whether the opposing party was prejudiced, and whether prompt remedial action took place are factors to consider. An attorney who relied on an oral courtesy agreement whose terms were not disputed and promptly filed for an extension acted with excusable neglect. *Rutan v. Miller*, 213 Wis. 2d 94, 570 N.W.2d 54 (Ct. App. 1997).

Under sub. (1) (b) the last day is included in determining time periods unless it is “a day the clerk of courts office is closed.” Whether or not the day is a “holiday” under sub. (1) (a) is not relevant. *Klingbeil v. Perschke*, 228 Wis. 2d 421, 596 N.W.2d 488 (Ct. App. 1999).

A courtesy extension agreement is not required to be in writing, but a court may consider the lack of documentation in making a determination as to whether an agreement existed. *Connor v. Connor*, 2001 WI 49, 243 Wis. 2d 279, 627 N.W.2d 182, 99–0157.

The trial court erroneously exercised its discretion by entering default judgment without hearing offered testimony on the question of whether an oral courtesy agreement existed, and if so, what the agreement provided. *Johnson Bank v. Brandon Apparel Group, Inc.* 2001 WI App 159, 246 Wis. 2d 840, 632 N.W.2d 107.

The trial court court was not required to find excusable neglect for failing to file a timely answer due to a process server's failure to endorse and date the summons and complaint as required under s. 801.10 (2) when the failure to answer in a timely manner amounted to nothing more than carelessness and inattentiveness on the part of the parties involved. While prompt remedial action after the expiration of the statutory time limit is a material factor bearing on whether relief should be granted, it does not eliminate the requirement that a dilatory party demonstrate excusable neglect for its initial failure to meet the statutory deadline. *Williams Corner Investors, LLC v. Area-wide Cellular, LLC*, 2004 WI App 27, 269 Wis. 2d 682, 676 N.W.2d 168, 03–0824.

Avoiding and obtaining relief from default judgments. *Parlee*, WBB April, 1985.

801.16 Filing. (1) The filing of pleadings and other papers with the court as required by these statutes shall be made by filing them with the clerk of circuit court. The judge may require that the person filing the papers provide a copy to the judge.

(2) For papers that do not require a filing fee:

(a) A court may adopt a local rule, if it is approved by the chief judge, that permits the filing of papers with the clerk of circuit court by facsimile transmission to a plain–paper facsimile machine at a telephone number designated by the court. To provide uniformity, any local rule shall specify a 15–page limit for a facsimile transmission, unless an exception is approved by the assigned judge or court commissioner on a case–by–case basis.

(b) If no rule has been adopted under par. (a), the assigned judge or court commissioner may permit a party or attorney in a specific matter to file papers with the clerk of circuit court by facsimile transmission to a plain–paper facsimile machine at a telephone number designated by the assigned judge or court commissioner.

(c) If the facsimile transmission exceeds 15 pages or is filed in the absence of a local rule, the party or attorney shall certify that the assigned judge or court commissioner has approved the facsimile transmission.

(d) If papers are transmitted to a plain–paper facsimile machine of a noncourt agency, party, or company for the receipt, transmittal, and delivery to the clerk of circuit court, the clerk of circuit court shall accept the papers for filing only if the transmission complies with the local rule or has been approved by the assigned judge or court commissioner and certified by the party or attorney.

(e) Facsimile papers are considered filed upon receipt by the clerk of circuit court and are the official record of the court and may not be substituted. No additional copies may be sent. The clerk of circuit court shall discard any duplicate papers subsequently received by the clerk of circuit court, assigned judge, or court commissioner.

(f) Papers filed by facsimile transmission completed after regular business hours of the clerk of circuit court's office are considered filed the next business day.

History: Sup. Ct. Order, 161 Wis. 2d xvii (1991); Sup. Ct. Order No. 94–11, 187 Wis. 2d xxxiii; Sup. Ct. Order No. 00–09, 2001 WI 33, 241 Wis. 2d xix.

Judicial Council Note, 1991: Sub. (2) clarifies that papers (other than those requiring a filing fee) may be filed by facsimile transmission to the judge or clerk, if a local court rule, or the judge in a specific matter, so permits. [Re Order eff. 7–1–91.]

A notice of appeal does not require a filing fee and may be filed by facsimile transmission under sub. (2). *State v. Sorenson*, 2000 WI 43, 234 Wis. 2d 648, 611 N.W.2d 240.

801.50 Venue in civil actions or special proceedings.

(1) A defect in venue shall not affect the validity of any order or judgment.

(2) Except as otherwise provided by statute, venue in civil actions or special proceedings shall be as follows:

(a) In the county where the claim arose;

(b) In the county where the real or tangible personal property, or some part thereof, which is the subject of the claim, is situated;

(c) In the county where a defendant resides or does substantial business; or

(d) If the provisions under par. (a) to (c) do not apply, then venue shall be in any county designated by the plaintiff.

(3) All actions in which the sole defendant is the state, any state board or commission or any state officer, employee or agent

in an official capacity shall be venued in Dane County unless another venue is specifically authorized by law.

(4) Venue of an action seeking a remedy available by habeas corpus shall be in the county:

(a) Where the plaintiff was convicted or sentenced if the action seeks relief from a judgment of conviction or sentence under which the plaintiff's liberty is restrained.

(b) Where the liberty of the plaintiff is restrained if the action seeks relief concerning any other matter relating to a restraint on the liberty of the plaintiff.

(5) Venue of an action for certiorari to review a probation, extended supervision or parole revocation, a denial by a program review committee under s. 302.113 (9g) of a petition for modification of a bifurcated sentence, or a refusal of parole shall be the county in which the relator was last convicted of an offense for which the relator was on probation, extended supervision or parole or for which the relator is currently incarcerated.

(5c) Venue of an action for certiorari brought by the department of corrections under s. 302.113 (9) (d) or 302.114 (9) (d) to review a decision to not revoke extended supervision shall be in the county in which the person on extended supervision was convicted of the offense for which he or she is on extended supervision.

(5m) Venue of an action arising from a consumer credit transaction, as defined in s. 421.301 (10), shall be in any county specified in s. 421.401 (1).

(5p) Venue of an environmental pollution action brought by a person who is not a resident of this state against a commission created under s. 200.23 shall be in the county which contains the 1st class city that is located wholly or partially within the applicable district created under s. 200.23.

(5r) Venue of an action under s. 813.12 growing out of domestic abuse shall be in the county in which the cause of action arose, where the petitioner or the respondent resides or where the petitioner is temporarily living.

(5s) Venue of an action under s. 813.122 or 813.125 shall be in the county in which the cause of action arose or where the petitioner or the respondent resides.

(6) Venue under this section may be changed under s. 801.52.

History: 1983 a. 204, 228, 389, 538; 1985 a. 234, 291; 1987 a. 208; 1993 a. 318, 319; 1997 a. 283; 1999 a. 150 s. 672; 2001 a. 30 s. 108; 2001 a. 109.

Cross-reference: See s. 813.02 (4) for exception to sub. (1) as to venue.

Judicial Council Note, 1983: Sub. (1) is designed to separate questions of venue from questions of jurisdiction and competency. A defect in venue is not jurisdictional and does not affect the competence of the court. The cure for a defect in venue is to change the place of trial.

Sub. (2) liberalizes the present venue statute by providing the plaintiff with a broader range of initial venue choices. This subsection also deletes many of the archaic distinctions in the former statute.

The following list contains many, but not all, of the specialized venue provisions not found in chapter 801: s. 48.185 (children's code proceedings); s. 48.83 (adoption of minors); s. 51.45 (13) (n) (civil mental commitments); s. 767.65 (11) Revised (proceedings under the uniform reciprocal enforcement of Support act); s. 77.12 (forest croplands tax act); s. 111.60 (Wisconsin employment relations act); s. 144.73 (4) [now s. 291.95 (4)] (hazardous waste act); s. 185.44 (1) (cooperative contracts); s. 195.07 (railroad regulation act); s. 196.44 (3) (public utilities regulation act); s. 198.12 (2) (municipal power and water district act); s. 215.02 (5) (savings and loan association act); s. 227.16 (1) (administrative procedure act); s. 232.38 (solid waste recycling authority act); s. 234.22 (housing finance authority act); s. 345.31 (motor vehicle act); s. 421.401 (Wisconsin consumer act); s. 645.04 (1) (insurers rehabilitation and liquidation act); [s. 655.19 (health care liability and patients compensation)]; s. 701.14 (4) (living trusts); s. 752.21 (court of appeals); s. 753.065 (naturalization proceedings); s. 757.89 (Wisconsin judicial commission); s. 776.13 (annulment of corporate charters); s. 779.20 (log liens); s. 799.11 (small claims actions); s. 800.15 (municipal court appeals); s. 880.05 (guardianship actions); s. 882.03 (adult adoptions); s. 971.19 (criminal proceedings); s. 979.01 (inquests of the dead); s. 23.90 (conservation act); s. 45.50 (3) (soldiers and sailors civil relief); and s. 753.34 (5) (Menominee and Shawano counties).

Sub. (3) remains the same in substance.

Subs. (4) and (5) remain unchanged.

Sub. (6) recognizes the authority of the judge to change venue under s. 801.52. [Bill 324–S]

“Substantial business” under sub. (2) (c) is discussed. Enpro Assessment Corp. v. Enpro Plus, Inc. 171 Wis. 2d 542, 492 N.W.2d 325 (Ct. App. 1992).

“Where the liberty of the plaintiff is restrained” under sub. (4) (b) is the county where the plaintiff is confined. State ex rel. Frederick v. McCaugherty, 173 Wis. 2d 222, 496 N.W.2d 327 (Ct. App. 1992).

A certiorari proceeding to review a probation revocation must be heard in the circuit court of conviction, but it need not be heard by the same branch. Drow v. Schwartz, 225 Wis. 2d 362, 592 N.W.2d 623 (1999).

Wisconsin's revised venue statutes. Fullin, WBB September, 1984.

801.51 Challenges to improper venue. Any party may challenge venue, on the grounds of noncompliance with s. 801.50 or any other statute designating proper venue, by filing a motion for change of venue:

(1) At or before the time the party serves his or her first motion or responsive pleading in the action.

(2) After the time set forth in sub. (1), upon a showing that despite reasonable diligence, the party did not discover the grounds therefor at or before that time.

History: 1983 a. 228.

Judicial Council Note, 1983: This section sets forth the procedure for challenging the plaintiff's initial choice of venue on the grounds that it fails to comply with the provisions of s. 801.50 or any other statute specifying proper venue. The former statute's 2-stage proceeding was unnecessary and tended to create confusion for unwary litigants. [Bill 324–S]

801.52 Discretionary change of venue. The court may at any time, upon its own motion, the motion of a party or the stipulation of the parties, change the venue to any county in the interest of justice or for the convenience of the parties or witnesses.

History: 1983 a. 228.

Judicial Council Note, 1983: This section authorizes grounds for changing venue beyond the failure to comply with s. 801.50. It permits the court to apply traditional forum non conveniens principles to requests for discretionary change of venue. The court has discretion to change venue to any county in the state. [Bill 324–S]

801.53 Determination of motion for change of venue. Motions under ss. 801.51 and 801.52 shall be determined on the basis of proofs submitted by the parties unless the court orders a hearing or oral argument. Oral argument shall be heard by telephonic conference unless the court otherwise orders for cause shown.

History: 1983 a. 228.

Judicial Council Note, 1983: The provisions of the prior statute are revised in new s. 801.51. Motions under s. 801.51 are rarely contested and usually decided on affidavit. As on other non-evidentiary motions, oral argument should, if desired, be heard by 3-way or conference telephone call. Motions under s. 801.52, while requiring a factual foundation, usually are based not on dispute of fact but on balance of equities. Unless good cause to the contrary is advanced, arguments should be heard by 3-way or telephonic conference call. [Bill 324–S]

801.56 Change of venue if judge disqualified by interest. When the judge is a party or interested in any action in the judge's court or is related to or has been of counsel for either party, the court or the presiding judge thereof shall, upon application of either party, and may without such application, change the place of trial or call in another judge as provided in s. 801.58. The fact that the judge is a taxpayer does not disqualify the judge.

History: Sup. Ct. Order, 67 Wis. 2d 585, 757, 777 (1975); 1975 c. 218; Stats. 1975 s. 801.56.

801.58 Substitution of judge. (1) Any party to a civil action or proceeding may file a written request, signed personally or by his or her attorney, with the clerk of courts for a substitution of a new judge for the judge assigned to the case. The written request shall be filed preceding the hearing of any preliminary contested matters and, if by the plaintiff, not later than 60 days after the summons and complaint are filed or, if by any other party, not later than 60 days after service of a summons and complaint upon that party. If a new judge is assigned to the trial of a case, a request for substitution must be made within 10 days of receipt of notice of assignment, provided that if the notice of assignment is received less than 10 days prior to trial, the request for substitution must be made within 24 hours of receipt of the notice and provided that if notification is received less than 24 hours prior to trial, the action shall proceed to trial only upon stipulation of the parties that the assigned judge may preside at the trial of the action. Upon filing the written request, the filing party shall forthwith mail a copy thereof to all parties to the action and to the named judge.

(2) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has

been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 751.03. If the judge named in the substitution request finds that the request was not timely and in proper form, that determination may be reviewed by the chief judge of the judicial administrative district, or by the chief judge of an adjoining judicial administrative district if the judge named in the request is the chief judge, if the party who made the substitution request files a written request for review with the clerk no later than 10 days after the determination by the judge named in the request. If no determination is made by the judge named in the request within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district or to the chief judge of an adjoining judicial administrative district, if the judge named in the request is the chief judge, for determination of whether the request was made timely and in proper form and reassignment as necessary. The newly assigned judge shall proceed under s. 802.10 (1).

(3) Except as provided in sub. (7), no party may file more than one such written request in any one action, nor may any single such request name more than one judge. For purposes of this subsection parties united in interest and pleading together shall be considered as a single party, but the consent of all such parties is not needed for the filing by one of such party of a written request.

(4) Upon the filing of an agreement signed by all parties to a civil action or proceeding, by the original judge for which a substitution of a new judge has been made, and by the new judge, the civil action or proceeding and pertinent records shall be transferred back to the original judge.

(5) In addition to other substitution of judge procedures, in probate matters a party may file a written request specifically stating the issue in a probate proceeding for which a request for substitution of a new judge has been made. The judge shall thereupon be substituted in relation to that issue but after resolution of the issue shall continue with the administration of the estate. If a person wishes to file a written request for substitution of a new judge for the entire proceeding, subs. (1) to (4) shall apply.

(6) (a) In probate matters ss. 801.59 to 801.62 apply, except that upon the substitution of any judge, the case shall be referred to the register in probate, who shall request assignment of another judge under s. 751.03 to attend and hold court in such matter.

(b) Ex parte orders, letters, bonds, petitions and affidavits may be presented to the assigned judge, by mail or in person, for signing or approving, wherever the judge may be holding court, who shall execute or approve the same and forthwith transmit the same to the attorney who presented it, for filing with the circuit court of the county where the records and files of the matter are kept.

(7) If upon an appeal from a judgment or order or upon a writ of error the appellate court orders a new trial or reverses or modifies the judgment or order as to any or all of the parties in a manner such that further proceedings in the trial court are necessary, any party may file a request under sub. (1) within 20 days after the filing of the remittitur in the trial court whether or not another request was filed prior to the time the appeal or writ of error was taken.

History: 1971 c. 46, 138, 296; Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975); Stats. 1975 s. 801.58; 1977 c. 135 ss. 7, 15, 16; 1977 c. 187 s. 135; Sup. Ct. Order, 82 Wis. 2d ix (1978); 1977 c. 449; 1979 c. 175 ss. 50, 53; 1981 c. 137; 1987 a. 68.

Judicial Council Note, 1977: Section 801.58 of the statutes has been changed in a number of significant ways. The statute states that a substitution of judge request in a civil action or proceeding is timely only if made before the hearing of a preliminary contested matter, codifying *Pure Milk Products Coop. v. NFO*, 64 Wis. 2d 241 (1974).

A new provision has been added to allow the parties to a criminal action or proceeding, the prosecuting attorney, and the original and the new judge to agree to have the matter referred back to the original judge. This will aid the administration of justice in those cases where it is advantageous for everyone concerned to have the original judge take back the matter. [Bill 74–S]

Judicial Council Committee's Note, 1977: Sub. (1) is amended to give a plaintiff 60 days from the time the summons and complaint are filed or a defendant or any added party 60 days after service of a summons and complaint upon them to request

a substitution of a new judge, provided no preliminary contested matters have been argued by the requester. The previous time periods for requesting a substitution of judge (i.e., 10 days after the date of notice for a scheduling conference or 10 days after service of a standard scheduling order) are repealed as the use of such a conference or order is no longer mandatory under s. 802.10. [Re Order effective July 1, 1978]

Judicial Council Note, 1981: Sub. (2) has been revised to allow the clerk to refer the substitution request to the chief judge of the judicial administrative district when the judge whose substitution has been requested fails to determine within 7 days whether the request is timely made and in proper form.

Sub. (7) has been amended to clarify that the 20–day time period for filing a substitution request after an appellate remand commences upon the filing of the remittitur in the trial court. *Rohl v. State*, 97 Wis. 2d 514 (1980). [Bill 163–S]

A right can be waived by participation in preliminary motions in which the judge is allowed to receive evidence that of necessity is used and weighed in deciding ultimate issues. *Pure Milk Products Coop. v. NFO*, 64 Wis. 2d 241, 219 N.W.2d 564 (1974).

The *Bacon–Bahrrule*, which interprets this section to bar substitution in proceedings to modify support or custody orders, applies only to cases in which the judge has been previously involved. *State ex rel. Tarney v. McCormack*, 99 Wis. 2d 220, 298 N.W.2d 552 (1980).

A substitution of judge request may be filed with a deputy clerk. In *Matter of Civil Contempt of Kroll*, 101 Wis. 2d 296, 304 N.W.2d 175 (Ct. App. 1981).

An added party may request a substitution within 60 days of service if the added party has not actually participated in preliminary contested matters. *City of La Crosse v. Jiracek Cos., Inc.* 108 Wis. 2d 684, 324 N.W.2d 440 (Ct. App. 1982).

The 10–day period for substitution under sub. (1) is triggered by receipt of actual notice that the new judge has been assigned. *State ex rel. Laborers Union v. Kenosha Cir. Ct.* 112 Wis. 2d 337, 332 N.W.2d 832 (Ct. App. 1983).

Sub. (7) creates an unqualified right to substitution when further trial court proceedings are necessary after remand from an appellate court. *State ex rel. Oman v. Hunkins*, 120 Wis. 2d 86, 352 N.W.2d 220 (Ct. App. 1984).

“Further proceedings” under ss. 801.58 (7) and 808.08 (3) have the same definition. *State ex rel. Ondrasek v. Circuit Ct.* 133 Wis. 2d 177, 394 N.W.2d 912 (Ct. App. 1986).

When parties are united in interest and plead together, if one presents its views in a preliminary contested matter, all united parties are barred from moving for substitution. *Carkel, Inc. v. Lincoln County Circuit Court*, 141 Wis. 2d 257, 414 N.W.2d 640 (1987). See also *DeWitt Ross & Stevens v. Galaxy Gaming and Racing*, 2003 WI App 190, 267 Wis. 2d 233, 670 N.W.2d 74, 02–0359. Affirmed on other grounds, 2004 WI 92, ___ Wis. 2d ___, ___ N.W.2d ___, 02–0359.

When the trial court is ordered to clarify its ruling in a divorce matter on remand, the *Bacon–Bahrrule* applies and no substitution under (7) is permitted. *Parrish v. Kenosha County Circuit Ct.* 148 Wis. 2d 700, 436 N.W.2d 608 (1989).

Because an ex parte restraining order is not issued in the context of a contested proceeding, a substitution request may be granted subsequent to the entry of an order and prior to a hearing on the merits. *Threlfall v. Town of Muscodia*, 152 Wis. 2d 308, 448 N.W.2d 274 (Ct. App. 1989).

A request for substitution is not allowed when a recommitment hearing under s. 51.20 (13) (g) 3. is before the same judge who conducted the original commitment proceeding. *Serocki v. Clark County Circuit Court*, 163 Wis. 2d 152, 471 N.W.2d 49 (1991).

The requirement of sub. (1) that substitution requests be filed preceding the hearing of any “preliminary contested matters” applies to requests filed under sub. (5). A motion to compel discovery constitutes a “preliminary contested matter.” *State ex rel. Sielen v. Circuit Court for Milwaukee County*, 176 Wis. 2d 101, 499 N.W.2d 651 (1993).

A nonsummary contempt motion is a part of the underlying action from which it arises, and the time allowed for requesting judicial substitution runs from the commencement of the action not from receipt of notice of the contempt proceeding. *James L.J. v. Walworth County Circuit Court*, 200 Wis. 2d 496, 546 N.W.2d 460 (1996), 94–2043.

The court of appeals is authorized to exercise its supervisory authority over a chief judge who is ruling on a substitution request. *James L.J. v. Walworth County Circuit Court*, 200 Wis. 2d 496, 546 N.W.2d 460 (1996), 94–2043.

The right to judicial substitution applies to ch. 980 proceedings. *State v. Brown*, 215 Wis. 2d 710, 573 N.W.2d 884 (Ct. App. 1997).

When a judge normally presides in one county but is assigned by substitution to a case filed in another county, the filing and entry for appeal purposes occur when the document comes into the possession of the clerk of court in the county in which the case was commenced. *State v. Williams*, 230 Wis. 2d 50, 601 N.W.2d 838 (Ct. App. 1999).

The only time a chief judge may become involved in the substitution process under sub. (2) is if a circuit court denies a substitution request for not being timely or properly filed. *State ex rel. J.H. Findorff v. Circuit Court for Milwaukee County*, 2000 WI 30, 233 Wis. 2d 428, 608 N.W.2d 679.

If a circuit court may exercise discretion in discharging its duties on remand, the court must engage in “further proceedings” under sub. (7), entitling the parties to the right of substitution. If the remand requires a specific action that requires no exercise of discretion by the trial court, no substitution is allowed. *State ex rel. J.H. Findorff v. Circuit Court for Milwaukee County*, 2000 WI 30, 233 Wis. 2d 428, 608 N.W.2d 679.

Review by the chief judge under sub. (2) is a prerequisite to appeal a denial of a request for substitution. A chief judge may review a denial only if a timely request for review is made. *Paternity of Daniel L.G.* 2002 WI App 47, 650 Wis. 2d 667, 641 N.W.2d 175.

Because two insurance companies' policies for the same insured were in effect on different dates and provided different types of coverages, they would not be similarly affected by the court's determination of when damages occurred. As determination of the dates would eliminate the possibility of coverage by one company and raise the possibility of coverage by the other, the two companies were not united in interest under sub. (3) although they shared some interests in the case. *Cincinnati Insurance Company v. Milwaukee County*, 2003 WI 57, 262 Wis. 2d 100, 663 N.W.2d 275.

For a motion hearing to be a "preliminary contested matter" for purposes of sub. (1), the dispositive question is whether the hearing concerned a substantive issue that went to the merits of the case. A hearing on a motion that depositions be suspended sought to narrow the scope of discovery and thus addressed a substantive issue that affected the presentation of the case. *DeWitt Ross & Stevens v. Galaxy Gaming and Racing*, 2003 WI App 190, 267 Wis. 2d 233, 670 N.W.2d 74, 02–0359. Affirmed on other grounds, 2004 WI 92, ___ Wis. 2d ___, ___ N.W.2d ___, 02–0359.

The civil peremptory substitution statute. Seaburg, WBB January, 1986.

801.59 Assigned judge. In any case where another judge has been assigned under s. 751.03 to hear a particular action or proceeding, the clerk of circuit court shall forthwith notify all parties to the action or proceeding, by mail or telephone, noting in the case file the time notice was sent or given and, if notice is given by telephone, the person with whom he or she spoke. If a written request for a substitution of a new judge is filed with regard to an assigned judge, it shall be filed within 7 days after notice of the assignment has been received. A copy of the written request shall be mailed forthwith to all parties and to the named judge.

History: 1971 c. 296; Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975); 1977 c. 187 s. 135; Sup. Ct. Order, 141 Wis. 2d xiii (1987).

Judicial Council Note, 1988: This section is amended by allowing notice of a newly assigned judge to be given to the parties by telephone. Notation of the time of notice is required for purposes of s. 801.58 (1). [Re Order effective Jan. 1, 1988]

801.61 Proceedings after order for change of venue. When the place of trial is changed all process, pleadings and other papers, and copies of all entries and minutes of the clerk in such action shall be certified and transmitted by such clerk to the clerk of the court to which the trial is changed, with a statement of fees. Such fees shall be paid before transmission by the party procuring such change, except in the case mentioned in s. 801.51, in which case the plaintiff shall pay such fees and the change shall be complete on the making of the order. The change, in other cases, shall be complete on filing the papers transmitted. If such transmission and filing be not made within 20 days from the making of the order to change the place of trial, unless such time be extended, the moving party shall lose the right to the change except in the case mentioned in s. 801.51, and no order for a change for the same cause shall thereafter be made and the moving party shall pay the costs of the application within 10 days after the expiration of said 20 days; but the other party may, within 40 days from the time of making of the order granting the change, pay the clerk fees and have the papers certified and transmitted to the court mentioned in such order.

History: Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975), 777; 1975 c. 218, 422; Stats. 1975 s. 801.61; 1983 a. 228 s. 16.

801.62 Conclusiveness of change of venue; second motion. After trial in the court to which the action has been changed, the proceedings for the change shall be conclusive unless a motion to remand was made before the trial commences. If after the transmission of the papers an order changing the place of trial is reversed or set aside the effect shall be to change the place of trial back. After the transmission of the papers back to the original court on the reversal or setting aside of the order, a party may renew the application for a change of venue within 20 days. The renewed application shall be treated as the original application.

History: Sup. Ct. Order, 67 Wis. 2d 585, 757 (1975); 1975 c. 218; Stats. 1975 s. 801.62; 1977 c. 449.

801.63 Stay of proceeding to permit trial in a foreign forum. (1) STAY ON INITIATIVE OF PARTIES. If a court of this state,

on motion of any party, finds that trial of an action pending before it should as a matter of substantial justice be tried in a forum outside this state, the court may in conformity with sub. (3) enter an order to stay further proceedings on the action in this state. A moving party under this subsection must stipulate consent to suit in the alternative forum and waive right to rely on statutes of limitation which may have run in the alternative forum after commencement of the action in this state. A stay order may be granted although the action could not have been commenced in the alternative forum without consent of the moving party.

(2) TIME FOR FILING AND HEARING MOTION. The motion to stay the proceedings shall be filed prior to or with the answer unless the motion is to stay proceedings on a cause raised by counterclaim, in which instance the motion shall be filed prior to or with the reply. The issues raised by this motion shall be tried to the court in advance of any issue going to the merits of the action and shall be joined with objections, if any, raised by answer or motion pursuant to s. 802.06 (2). The court shall find separately on each issue so tried and these findings shall be set forth in a single order.

(3) SCOPE OF TRIAL COURT DISCRETION ON MOTION TO STAY PROCEEDINGS. The decision on any timely motion to stay proceedings pursuant to sub. (1) is within the discretion of the court in which the action is pending. In the exercise of that discretion the court may appropriately consider such factors as:

(a) Amenability to personal jurisdiction in this state and in any alternative forum of the parties to the action;

(b) Convenience to the parties and witnesses of trial in this state and in any alternative forum;

(c) Differences in conflict of law rules applicable in this state and in any alternative forum; or

(d) Any other factors having substantial bearing upon the selection of a convenient, reasonable and fair place of trial.

(4) SUBSEQUENT MODIFICATION OF ORDER TO STAY PROCEEDINGS. Jurisdiction of the court continues over the parties to a proceeding in which a stay has been ordered under this section until a period of 5 years has elapsed since the last order affecting the stay was entered in the court. At any time during which jurisdiction of the court continues over the parties to the proceedings, the court may, on motion and notice to the parties, subsequently modify the stay order and take any further action in the proceeding as the interests of justice require. When jurisdiction of the court over the parties and the proceeding terminates by reason of the lapse of 5 years following the last court order in the action, the clerk of the court in which the stay was granted shall without notice enter an order dismissing the action.

(5) Motions under this section may be heard on the record as prescribed in s. 807.13.

History: Sup. Ct. Order, 67 Wis. 2d 585, 612 (1975), 758, 777; 1975 c. 218; Stats. 1975 s. 801.63; Sup. Ct. Order, 141 Wis. 2d xiii (1987); Sup. Ct. Order, 151 Wis. 2d xvii (1989).

Judicial Council Note, 1988: Sub. (5) [created] allows motions for stays under this section to be heard by telephone conference. [Re Order effective Jan. 1, 1988]

A motion to stay a Wisconsin action or transfer the case to an Iowa court where an action arising out of the same accident was pending was properly denied when the parties were different and because of Iowa law the plaintiff would lose substantial rights. *Littmann v. Littmann*, 57 Wis. 2d 238, 203 N.W.2d 901 (1973).

A court ordinarily should adjudicate the litigation before it and the plaintiff's choice of a forum should rarely be disturbed unless the balance is strongly in favor of the defendant. A trial of the cause should be permitted in another state only upon a convincing showing that the trial in Wisconsin is likely to result in a substantial injustice. *U.I.P. Corp. v. Lawyers Title Insurance Corp.* 65 Wis. 2d 377, 222 N.W.2d 638 (1974).

A party seeking a stay must show not only that trial in the forum state will be inconvenient and unjust but also that trial in another forum is both more convenient and just. *U.I.P. Corp. v. Lawyers Title Insurance Corp.* 82 Wis. 2d 616, 264 N.W.2d 525 (1974).

Section 801.63 does not control inconvenient forum motions in custody proceedings. *Mayer v. Mayer*, 91 Wis. 2d 342, 283 N.W.2d 591 (Ct. App. 1979).